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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: August 06, 2014*

+ **CRL.A. 814/2011**

ABBU

..... Appellant

Represented by: Mr.Sumeet Verma, Advocate

versus

STATE N.C.T. OF DELHI

..... Respondent

Represented by: Ms.Aashaa Tiwari, APP for
the State.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (ORAL)

1. Having heard learned counsel for the parties we note with regret that the learned Trial Judge has overlooked two very critical aspects of concerning the instant case. The first concerns evidence and the second concerns the law.

2. Exception 4 to Section 300 of the Indian Penal Code stipulates that culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. The exception has been totally overlooked by the learned Trial Judge. The learned Judge has overlooked evidence, being Abbu's MLC Ex.PW-22/A.

3. We narrate what transpired between the appellant Abbu and the

deceased Mota @ Langra through the percipient eyes of Raju PW-13.

4. He has deposed that on the intervening night of May 01, 2010 and May 02, 2010 he was sleeping in a dilapidated building near Mori Gate red light at 9.30 P.M. Abbu and one Rajah reached there and used filthy and abusive language against him while pulling his hair. They went to the adjoining room where Mota was smoking smack. A quarrel ensued. During the quarrel chain in Abbu's neck broke. Abbu took out a paper cutter and caused injuries on Mota who started running away. Abbu and Rajah chased and apprehend Mota. They dragged him to a small room and inflicted further blows with a paper cutter on him.

5. The percipient evidence of Raju brings out that something happened which led Abu and Mota to have a quarrel. During this scuffle chain on the neck of Abbu broke at which Abbu took out a paper cutter and caused injuries to Mota who ran. Abbu and Rajah chased him. They caught him. They dragged him to a small room and inflicted further blows with a paper cutter on the person of Mota.

6. Raju PW-13 has not spoken the complete truth for the reason Abbu's MLC Ex.PW-22/A prepared at 12.15 A.M. on May 03, 2010 records six injuries as under:-

- (i) Blood clots on both nostril;
- (ii) Punctured wound two in number, 1 cm x 0.5 cm on the left leg muscle deep;
- (iii) One punctured wound about 1 x 0.25 cm on the right leg;
- (iv) Abrasion in the left forearm;
- (v) Incised wound 1 x .25 cm on the left side of chest;
- (vi) Clear incised wound 4 x 0.25 cm horizontally placed

(illegible).

7. It is apparent that even Mota had some object with which he could inflict punctured and incised wounds on Abbu.

8. The post mortem report Ex.PW-12/A of Mota notes: (i) multiple superficial incised wound in an area 14 x 4 cm over left side of the face; (ii) multiple incised cut injuries intermingling to each other of size 12 x 4 cm, muscle deep on the left side of the neck; and (iii) incised wounds 12 x 4 cm on back of neck.

9. The cause of death is obviously excessive bleeding resulting in haemorrhagic shock.

10. The weapon of offence is a paper cutter which is of a kind we see in our chambers having a blade of 10 cm length and thickness of 1.7 cm.

11. The injuries on Abbu have obviously been inflicted by Mota. The two had a mutual fight. Both used a sharp edged object. The one used by Abu was recovered. The one used by Mota has not been recovered.

12. Mota was inflicted injuries which proved to be fatal and for which we need to speak a word. As deposed to by Raju, Mota was smoking smack. As per the MLC he was of average built. The drug addict had a low immunity. Injuries which otherwise would not be fatal to a person who is not a drug addict proved fatal for him.

13. It all happened upon a sudden quarrel. There was a mutual fight. Both inflicted incised and punctured wound on each other. One died and one survived. The act committed by Abbu cannot thus be treated as murder. The act committed by him is culpable homicide not amounting to murder, punishable under Section 304 Part-II of the Indian Penal Code.

14. We note that Abbu has undergone an actual sentence of five years. He has earned a remission for one year.

15. Under the circumstances we disposed of the appeal convicting Abbu for the offence of culpable homicide not amount to murder punishable under Section 304 Part-II IPC and as regards the sentence we direct that he shall undergo sentence for the period already undergone.

16. Abbu is in jail. We direct two copies of the decision be sent to the Superintendent Central Jail Tihar. One for the appellant Abbu and the other for the jail record.

17. TCR be returned.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

AUGUST 06, 2014
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